IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2251 of 1987

to

FIRST APPEAL No 2254 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDBHAI LALJIBHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 2251 of 1987

MR NITIN M AMIN for Appellants.

MR HC PATEL with MR.AD OZA,GP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE H.K.RATHOD

Date of decision: 21/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Nitin M.Amin for the appellants and Mr.H.C.Patel,learned AGP for the respondents.

1. There were References under section 18 of the Land Acquisition Act by the claimants against the award passed by the learned 2nd Special Land Acquisition Officer,Ahmedabad in land acquisition proceedings by which the Land Acquisition Officer awarded compensation at the rate of Rs. 0.25 per sq.mt.The claimants filed Land Acquisition Cases No. 50, 47, 48 and 49 of 1983. The award was passed by the learned Land Acquisition Officer on 9.11.1982.

2. The brief facts giving rise to the present group of appeals are as under:

The lands of the claimants were acquired for the purpose of Patana- Sunderiyana- Jaliya Gundh Godhavay Sarangpur road. The notification under section 4 of the Land Acquisition Act bearing no. JAM 24/1980 was issued on 25.1.1980 and was published in Gujarat Government Gazette at pages 1220-1221 on 31.7.1980. The notification under section 6 was issued on 1.5.1981 and was published in Gujarat Government Gazette Part IB at pages 800-802. The occupants and interested persons were called upon to advance their plea by serving notice under sections 9,10 and 4(1) of the Land Acquisition Act. All the claimants in each reference claimed compensation at the rate of Rs. 10/- per sq.mt. against the awarded amount at the rate of Rs.0.25 per sq.mt. by the then 2nd Special Land Acquisition Officer.

3. The Land Acquisition Cases No. 47 of 1983 to 49 of 1983 were consolidated with Land Acquisition Case No. 50 of 1983 and evidence was adduced in Land Acquisition Case No. 50 of 1983. All these Land Acquisition Cases were disposed of by the learned Land Acquisition Officer by his common judgment and award dated 9.11.1982 passed in Land Acquisition Case No. 50 of 1983. After Reference under section 18 of the Land Acquisition Act by the claimants before the Reference Court, the claimants' witness Laljibhai Premjibhai Ex. 15 was examined. Except that, no other witness was examined. Before the Reference Court, the case of the appellants was that the

lands were situated in the village abutting Dhandhuka Botad road which road starts from Botad and was tangent to their village and thereafter it goes to Barwada; the village Sarangpur is at the distance of one k.m. from their village; Sarangpur and Khambhatia are adjacent to each other; S.T.buses are plying by the said road; there is a big temple of Swaminarayan religion in the village Sarangpur and also there is a temple of Hanumanji at Sarangpur. At the distance of 8 k.ms. from the village in which the land under acquisition is situated, there is Botad town which is a taluka Headquarter of Government Offices; that there are facilities of school, hospital, ginning press, dispensaries; there are threatres, 15-20 branches of Banking Companies, Petrol Pump, ST Depot, Judicial Court and Police Headquarters and the said town Botad is having railway facility as it is a junction station. Similarly, town Dhandhuka is also a developed town. After notification under section 4 of the Land Acquisition Act, the prices of the lands have increased to the highest level. The possession from the claimants was taken over in the year 1970. As a consequence of handing over possession by the claimants, the lands of the claimants were divided and became fragment as a result of which the lands have become useless for the purpose of agriculture and, therefore, the claimants are also deprived of certain benefits. The case of the appellants was that they are agriculturists since the time of their ancestors and they being illiterate,are not maintaining accounts. The appellants get Rs.2000/- to Rs.3000/- per year as income from their lands. On the basis of the above facts, the claimants claimed Rs. 10/- per sq.mt. as adequate compensation.

4. The Reference Court framed the issues in paras 6 and 7 and on merits of the matter, the Reference Court considered the evidence of Laljibhai Premjibhai Ex.15 in Land Acquisition case No.50 of 1983 and it was observed that the amount awarded by the Land Acquisition Officer was not reasonable. The appellants relied on the judgment of the learned 2nd Extra Assistant Judge in Land Acquisition Case No.601 of 1983 because the lands under that reference are in the vicinity of the lands in question. The lands under that reference were acquired for identical purpose for which the lands in question are acquired. In his evidence, the said witness stated that the village Khambhata is at the distance of 8 k.ms. from Botad, a developed town and similarly Dhandhuka is also situated and is a developed taluka town. He has stated that the possessiion of the lands in question was handed over in 1970. According to this witness, the claimants used to earn Rs. 2000/- to Rs.3000/- per annum per Vigha

which now comes to nearly four times i.e. Rs. 12000/per annum per Vigha. Therefore, the amount of income can be considered to be of 1976. Considering this aspect, the rate of Rs. 0.25 per sq.mt. is too meagre and inadequate to be called as justified compensation. Considering this evidence and other material on record, the Reference Court came to the conclusion that Rs. 9/per sq.mt. was the adequate compensation and, therefore, the Reference Court awarded compensation at the rate of Rs.9/- per sq.mt. The Reference Court further considered the claim of the claimants in respect of acquisition and deprivation of lands against their wishes and willingness. Therefore, considering the Amendment in the Act, 30% solatium was awarded. The Reference Court also awarded interest at the rate of 9% for the first year since the date of handing over of possession of lands acquired and thereafter for the rest of period at the rate of 12% p.a. till the amount of compensation was deposited in the Court. Accordingly, all the four references were disposed of by common judgment and award dated 30.12.1985.

5. Mr.Amin, learned advocate for the appellants submited that the Reference Court has committed an error in granting 12% interest for subsequent period under section 28 of the Land Acquisition Act. He has submitted that in fact, the appellants are entitled to 15% interest as per the proviso to section 28 of the Land Acquisition Act. Mr. Amin has also submitted that the Reference Court has committed error in not granting 12% increase on the market price of the land under section 23(1-A) of the Act. In the submission of learned advocate, these are the statutory benefits available to the appellants as per the amendment made in the Act in 1984. He has also submitted that they are not challenging the rate of Rs.9 per sq.mt. granted by the Reference Court, but they are entitled to the benefits which are available to the appellants as per the statutory Amendment of 1984.

6. Mr.H.C.Patel, learned AGP for the respondents,while not seriously objecting has fairly submitted that the statutory benefits under the Amended Act are available to the appellants.

7. We have considered the submissions advanced by both the learned advocates. It is necessary to note that the Land Acquisition Officer has passed the award on 9.11.1982 and the Reference Court passed the award on 30.12.1985. The additional compensation which has been awarded by the Reference Court is not challenged by the appellants. Therefore, the only questions which are

required to be examined by us are whether the appellants are entitled to 15% interest under section 28 of the Land Acquisition Act and whether the appellants are also entitled to 12% increase in the market price of the land in question under section 23(1-A) of the Act.

8. We have perused the award of the Reference Court. There is no dispute about the dates of passing the award by the Land Acquisition Officer and the Reference Court. There is also no dispute with regard to the dates on which notifications under sections 4 and 6 were issued.

9. Subsection (2) of section 30 of the Amended Act provides that" the provisions of subsection (2) of Sections 23 and 28 of the principal Act, as amended by Clause (b) of Sections 15 and 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act later than 30th day of April 1982(the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People and before the commencement of this Act."

10. Considering this amendment itself, since the Land Acquisition Officer passed the award on 9.11.1982 which is subsequent to 30.4.1982 and prior to 24.9.1984, the case of the appellants is squarely covered and, therefore, the statutory benefits of such amendment are available to the appellants. The Reference Court has passed award on 30.12.1985 subsequent to Amendment of 1984 came into force.

11. The appellants are, therefore, entitled to the benefit of 12% increase as per section 23(1-A) which provides that "In additional to market value of the land, as above provided, the Court shall in every case, award an amount calculated at the rate of 12% per anum on such market value for the period commencing on and from the date of publication of the notification under section 4 subsection (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier." The explanation make it clear that in computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land wereheld up on account of any stay or injunction by the order any Court shall be excluded.

12. In light of this section 23(1-A), notification

under section 4 was published by the State Government on 25.1.1980 and in Government Gazette, it was published on 31.7.1980. The Land Acquisition Officer passed the award on 9.11.1982. Therefore, the appellants are entitled to 12% increase in the market price from the date of notification under section 4 dated 31.7.1980 till the award passed by the Land Acquisition Officer on 9.11.1982.

13. The proviso to section 28 provides that where such excess or any part thereof is paid into court after the date of expiry of a period one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

14. In view of these statutory provisions and considering the amendment made by the Amendment Act of 1984 as also considering the facts of the present case, the appellants are entitled to the benefitof 15% interest for the second year from the date of handing over possession of the lands acquired and thereafter till the amount of compensation is deposited in the Court. The appellants are also entitled to 12% increase on the market price from the date of notification under section 4 and upto the date of award passed by the Land Acquisition Officer.

15. In the result, the present group of appeals is allowed and the award passed by the Reference Court dated 30.12.1985 in Land Acquisition Cases No. 50, 47, 48 and 49 of 1983 is accordingly modified. The respondents are directed to pay to the appellants the interest at the rate of 9% p.a. on the total amount of compensation awarded in favour of claimants including solatium for a period of one year from the date on which possession was taken and thereafter at the rate of 15% p.a. shall be paid from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid in Court before the date of such expiry. The respondents are further directed to pay 12% increase on the market price to the appellants which has been awarded by the Reference Court from the date on which notification under sectioin 4 was published i.e. from 31.7.1980 till the award was passed by the Land Acquisition Officer i.e.till 9.11.1982.

In view of this, the respondents are further directed to pay the entire amount, as aforesaid, to the

appellants within a period of three months from the date of receipt of writ of this judgment. The Registry is directed to modify the award of Reference Court accordingly.

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

sonar/-